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IN THE MATTER OF:

MRM Marine, LLC
4409 Granite Drive
Rocklin, CA 95677

Docket No. CWA-404-309(a)-05-013

**Proceeding Under Section 309(a) of
the Federal Clean Water Act,
33 U.S.C. § 1319(a), As Amended**

1. This Administrative Order on Consent ("Consent Order" or "Order") is entered

into voluntarily by the United States Environmental Protection Agency, Region IX (“EPA”), MRM Marine, LLC (“MRM”) and Race Builders, Inc. (“Race Builders”). EPA alleges that MRM, the property owner and project proponent, and Race Builders, a construction company hired by MRM, (collectively “Respondents”) discharged dredged or fill materials into .31 acres of jurisdictional waters on Vinci Avenue in the City of Sacramento between Raley and Dry Creek Road (Sections 19, Township 9 North, Range 5 East Rio Linda USGS Quadrangle). EPA alleges that these discharges of dredged or fill material were made without authorization under Section 404 of the CWA, 33 U.S.C. § 1344, in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). This Consent Order directs Respondents to undertake specified measures to compensate for the adverse impacts to waters of the United States resulting from the alleged unauthorized discharges.

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II. JURISDICTION

2. EPA issues this Consent Order under the authority vested in its Administrator by Section 309(a) of the CWA. 33 U.S.C. § 1319(a). This authority has been delegated to the Regional Administrator, EPA Region IX, and re-delegated to the Director of the Water Division, EPA Region IX.

3. Respondents agree not to contest EPA's jurisdiction or authority to issue or enforce this Consent Order. Respondents also agree not to contest the validity of any terms and conditions of this Consent Order in any action to enforce, or in any action arising from, the Consent Order.

4. EPA's decisions or actions, in entering into and pursuant to this Consent Order, are not subject to judicial review prior to the United States' initiation of judicial action to compel Respondents' compliance with this Consent Order.

III. DEFINITIONS

5. Unless defined herein, terms used in this Consent Order shall have the meaning as assigned in the CWA or in regulations promulgated by EPA or the U.S. Army Corps of Engineers ("Corps") under the CWA. The following definitions shall apply to this Order:

6. "Consent Order" or "Order" shall mean this document, all attachments hereto, all its subsequent mutually agreed to modifications, and all submissions, including, but not limited to, deliverables, plans, schedules, reports (other than progress reports), maps, technical memoranda and specifications. Upon EPA approval, Respondents' submissions are incorporated and enforceable as part of this Order. In case of inconsistency, this document and its subsequent modifications shall control.

7. "EPA" shall mean the U.S. Environmental Protection Agency.

8. "Respondents" shall mean MRM Marine, LLC and Race Builders.

9. "Parties" shall mean the EPA and Respondents.

10. "Site" shall mean the real property owned by MRM Marine, LLC on Vinci

1 Avenue in the City of Sacramento between Raley and Dry Creek Road (Sections 19, Township 9
2 North, Range 5 East Rio Linda USGS Quadrangle) .

3 11. "Work" shall mean all activities Respondents are required to undertake and
4 accomplish under this Consent Order.

5 IV. PARTIES BOUND

6 12. This Consent Order shall be binding on Respondents and their elected officials,
7 officers, directors, partners, agents, employees, attorneys, successors and assigns and on all
8 persons, independent contractors, contractors and consultants acting in concert with
9 Respondents.

10 13. The undersigned signatories for Respondents certify that they are authorized to
11 execute this Consent Order and legally bind Respondents.

12 V. EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

13 14. Race Builders Incorporated ("Race Builders") is a corporation and MRM
14 Marine LLC ("MRM") is a Limited Liability Company. Thus, both MRM and Race Builders
15 ("Respondents") are persons under Section 502(5) of the Act. 33 U.S.C. § 1362(5). Since
16 September 2002, MRM has owned real property adjacent to Magpie Creek on Vinci Avenue in
17 the City of Sacramento between Raley and Dry Creek Road (Sections 19, Township 9 North,
18 Range 5 East Rio Linda USGS Quadrangle) ("the Site").

19 15. Magpie Creek Diversion Channel traverses the northern edge of the Site.
20 Magpie Creek Diversion Channel is a tributary to Robla Creek, tributary to Natomas East Main
21 Drainage Canal (also known as Steelhead Creek), tributary to Natomas Main Drainage Canal,
22 tributary to the Sacramento River, a navigable river, and therefore a water of the United States
23 within the meaning of CWA section 502(7), 33 U.S.C. § 1362(7). Magpie Creek Diversion
24 Channel and its tributaries are therefore waters of the United States. 40 C.F.R. 230.3(s)(5).

25 16. There were, at all times relevant to this Complaint, vernal pool wetlands
26 located on the Site in areas adjoining Magpie Creek Diversion Channel that were, at various
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1 times, hydrologically connected to Magpie Creek Diversion Channel and were therefore adjacent
2 to Magpie Creek Diversion Channel (the "Adjacent Wetlands"). Accordingly, the Adjacent
3 Wetlands located on the Site were, at all times relevant to this Complaint, waters of the United
4 States.

5 17. During or before March 2003, Respondent MRM hired Respondent Race
6 Builders to construct a marine service, repair, parts and storage facility at the Site.

7 18. The heavy equipment used by the Respondents and their contractors to place
8 pollutants into adjacent wetlands of Magpie Creek Diversion Channel are point sources as
9 defined in CWA section 502(14), 33 U.S.C. §§ 1362(14). The soil and other materials placed
10 into these waters are "dredged or fill materials" under Section 404 of the Act, 33 U.S.C. § 1344,
11 and hence are "pollutants" as defined in section 502(6) of the Act, 33 U.S.C. § 1362(6). The use
12 of earth moving equipment to place dredged or fill material into the waters of the United States
13 constitutes a "discharge of pollutants" under section 502(12) of the Act, 33 U.S.C. § 1362(12).
14 By authorizing, directing, or otherwise causing the discharge of dredged and fill material into the
15 Adjacent Wetlands, Respondents discharged pollutants to waters of the United States within the
16 meaning of Section 301(a) of the Act. 33 U.S.C. § 1311(a).

17 19. At no time did Respondents have a required Section 404 permit, 33 U.S.C. §
18 1344, from the Corps for the discharge of dredged and fill material to waters of the United States
19 described in the preceding paragraphs.

20 20. Based on all of the foregoing, Respondents have violated Section 301(a) of the
21 Act, 33 U.S.C. § 1311(a), by discharging pollutants into waters of the U.S. without a CWA
22 Section 404 permit, U.S.C. § 1344.

23 21. EPA finds that Respondents' compliance with the provisions of this Consent
24 Order will satisfy the objectives of the CWA and provide adequate and appropriate relief for the
25 unauthorized discharge of dredged or fill materials alleged in the previous paragraphs.
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22. Under this Consent Agreement, Respondents have agreed to purchase 0.93 acres of seasonal wetland credits at Sheridan Mitigation Bank. For the 0.31 acres of discharges that remain within waters of the United States, EPA finds that these discharges affected no more than five acres of nontidal wetlands or one acre of tidal wetlands, and this Consent Agreement, if complied with by Respondents, provides environmental benefits to an equal or greater degree than the environmental detriments caused by the unauthorized discharge of dredged or fill material into the waters of the United States on the Site.

VI. ORDER

23. Respondents shall not discharge pollutants into any waters of the United States on the Site except in compliance with the CWA.

24. Within ten (10) days of EPA's signature of this Consent Order, Respondents shall purchase .93 acres of seasonal wetland mitigation credits from the Sheridan Mitigation Bank. Within ten (10) days of purchase of the .93 acres of seasonal wetland mitigation credits from the Sheridan Mitigation Bank, Respondents shall submit to EPA, in the manner outlined in paragraphs 25 and 26, a copy of the payment to the Sheridan Mitigation Bank and a copy of the contract for sale which documents such purchase.

25. All submissions required by this Consent Order shall be signed by Respondents or by their duly authorized representative. Submissions must be in writing and specify either an individual or a position having responsibility for the overall operation of the activities being reported or for Respondents' environmental matters.

26. The person signing Respondents' submissions shall make the following certification:

I certify under penalty of law that the information submitted is true and correct to the best of my knowledge and belief. I am aware that there are significant penalties for submitting false information, including, but not limited to, the possibility of fines and imprisonment for knowing violations under § 309 of the Clean Water Act, 18 U.S.C. § 1001, and other relevant federal statutes.

1 27. Unless otherwise specified or requested by EPA, Respondents shall provide
2 each deliverable required under this Consent Order by first-class mail addressed to:

3 Jorine Campopiano
4 Wetlands Regulatory Office (WTR-8)
5 U.S.EPA Region IX
6 75 Hawthorne St.
7 San Francisco, CA 94105-3901

8 28. Submissions by Respondents shall be deemed made on the date they are
9 postmarked.

10 **VII. FAILURE TO COMPLY WITH CONSENT ORDER**

11 29. EPA reserves all available legal and equitable remedies to enforce this Consent
12 Order, and the right to seek recovery of any costs and attorney fees incurred by EPA in any
13 actions against Respondents for non-compliance with this Consent Order.

14 30. Failure to comply with this Consent Order is a violation of the CWA. Such
15 violation may subject Respondents to civil penalties not to exceed \$32,500 per day for each
16 violation under Section 309(d) of the CWA. 33 U.S.C. § 1319(d) and 40 C.F.R. § 19.4.

17 **IX. SCOPE OF CONSENT ORDER**

18 31. This Consent Order is not and shall not be construed to be a permit under the
19 CWA, nor shall it in any way relieve or affect Respondents' obligations under the CWA, or any
20 other applicable federal, state or local laws, regulations and permits. Compliance with this
21 Consent Order shall be no defense to any actions commenced pursuant to such applicable laws,
22 regulations or permits.

23 32. EPA expressly reserves its right to seek civil, administrative or criminal
24 penalties for the alleged violations of the CWA.

25 33. This Consent Order shall in no way affect the rights of EPA or the United
26 States against any person not a party hereto.
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1 X. SEVERABILITY

2 34. The provisions of this Consent Order shall be severable. Should any provision
3 be declared by a court of competent jurisdiction to be unenforceable, the remaining provisions
4 shall remain in full force and effect.

5 XI. EFFECTIVE DATE

6 35. This Consent Order shall take effect upon signature by all parties.

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8 IT IS SO AGREED AND ORDERED:

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10 For UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION IX

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12 Dated: 12 July 2005 Alexis Strauss
13 Alexis Strauss, Director
14 Water Division

15 FOR RESPONDENT, Race Builders Incorporated

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17 Date: 7/4/05 Rod Halbert
18 Rod Halbert, President
19 Race Builders Incorporated

20 FOR RESPONDENT, MRM Marine, LCC

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22 Date: 7-8-05 Robert Cope
23 Robert Cope, President
24 MRM Marine, LCC
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